IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 99 OF 1995

The State of Maharashtra.] .. Appellant

Vs

1. Suresh Vithoba Patil,]
   Age 27 years,]
2. Rukmini Bithoba Patil (since dead)]
   Age 70 years,]
   Both residing at village Nitture,]
   Taluka Chandgad, District Kolhapur.] .. Respondents

Dr. F.R. Shaikh, A.P.P., for the appellant-State.

Mr. Shekhar A. Ingawale the respondent No.1.

Respondent No.2 dead - Appeal abates against R.No.2.

CORAM: S.S. PARKAR &
ANOOP V. MOHTA, JJ.

DATED: 3RD FEBRUARY, 2005

ORAL JUDGMENT : [Per Anoop V. Mohta, J.]

1. This is a Criminal Appeal under Section 378(1) of the Criminal Procedure Code (for short "Cr.P.C.") by the State of Maharashtra (for short "State") against an order of acquittal, passed by the learned Additional Sessions Judge, Kolhapur, in Criminal Appeal No.51 of 1999 dated 2nd December, 1994, whereby, the conviction order dated 30th June, 1990, in Sessions Case No. 120 of 1988, against the respondent-accused under Section

498-A, 304-B read with Section 34 of the IPC, was set aside.

2. Respondent No.1-accused No.1 was married in the year 1982 to Shevanta @ Lakshmi, the sister of the complainant (PW1). After three years of the marriage, one son was born. Both husband and wife were living together in their marital house at Nitture, Taluka Chandgad, District Kolhapur, along with Rukmini Vithoba Patil - respondent No.2-accused No.2, the mother of respondent No.1. Respondent No.2 is now reported dead. Therefore, the Appeal is abated against her. On 2nd February, 1998, one Dattu Patil had informed to the Police that Shevanta (hereinafter referred to as "the deceased"), wife of respondent No.1, committed suicide by jumping into the well. An accidental death was accordingly registered. Later on, on 2nd February, 1998, PW1, the complainant came to know about the death of his sister. Therefore, he immediately rushed to the village and found the dead body of his sister. The complaint was lodged against the respondents, basically contending that because of frequent ill-treatments, the deceased had committed suicide. On the basis of the said complaint, the crime was registered. All the necessary Panchanamas and Inquest Reports were prepared. Various statements were recorded. The charge sheet was

submitted. The respondents denied the charges. The prosecution examined 7 witnesses in support of their case. There was no defence witness. Respondents pleaded "not guilty". The learned Trial Judge accepted the prosecution case and the accused were held guilty under Section 498-A and Section 304-B read with Section 34 of the Indian Penal Code (for short "IPC"). The respondents, therefore, had preferred the Appeal against the said order of conviction. By the impugned judgment and order, their Appeal was allowed, the order of conviction was set aside and they have been acquitted from all the charges.

3. Heard the learned Asstt. Public Prosecutor Dr. F.R. Shaikh for the appellant-State and the learned counsel Mr. N.J. Patil for the respondents. We have gone through the record in extenso and, after taking into consideration the submissions made by the counsel appearing for the parties, we are also of the view that the order of acquittal is within the framework of law and record. The same does not need any interference.

4. The prosecution witness PW1 and PW2 are the brothers of the deceased. PW3 is the sister of the deceased. PW4 is the first informant, on whose

information accidental death was registered. PW5 and PW6 are the neighbours. Both these witnesses were declared hostile and even otherwise, they have not supported the prosecution case. PW7 is the Investigating Officer. There is no eye-witness to the incident. The cause of death because of drowning, is not in dispute. The dead body of the deceased was found in the well, near the house of the deceased/accused on 1st February, 1988. PW4, the first informant of the incident, has deposed that the deceased Lakshmi alias Shewanta had committed suicide in a well, situated at village Nitture at about 9.00 p.m. and only after hue and cry, persons gathered and removed her dead body from the well. He, accordingly informed the Police [Exhibit-23]. Even though he could not name the deceased correctly, still there is nothing which supports the prosecution case. This witness has answered that the deceased used to provide water to the cattle before going to sleep. The accused and his wife used to sleep below the shed beyond the well in question. This witness, though a neighbour, nowhere mentions about any ill-treatment or harassment meted out by the respondent-accused to the deceased. This witness has deposed that accused No.1 was firstly married with one lady of village Kadalge, but she did not cohabit. Thereafter, accused No.1 married the deceased, who was

from village Kawalkatti. The marriage of respondent No.1 with the deceased was a second marriage.

5. PW5 and PW6 have not supported the prosecution case. They were declared hostile. Even by cross-examining them, the prosecution was unable to extract anything in their support. The witness have denied their earlier statements made to the Police. These witnesses nowhere support the case of ill-treatment and demand of dowry of any kind, as sought to be contended by the prosecution and by the complainant PW1. PW6 has, however, stated that there were three abortions undergone by Shevanta, the deceased, and she never disclosed anything to him.

6. PW1, Bharma, the brother of the deceased, the complainant, has deposed that he was not present at the time of the marriage of the deceased with respondent No.1 which took place in the year 1983. This witness has stated various unsupportive incidents to justify the prosecution case about the harassment by the respondents. On information by an unknown person on 2nd February, 1988, he came to know about the death of his sister. Therefore, they went to the village with his brother Appaji, mother Janabai and sister Kamlabai and her husband Govinda. The complaint was lodged

thereafter. This witness has admitted his and his brother's involvement in various murder cases at village Kawalkatti. He has also answered in the cross-examination that he did not enquire with the neighbours about the attitude of the accused towards the deceased, neither he took the deceased from the house of the accused, even though her life was in danger. This witness, therefore, was unable to support the prosecution case of ill-treatment or harassment soon before the date of the incident, as contemplated under Sections 304B and/or 498A. This witness had no personal knowledge about the incident.

7. PW2, Maruti, the brother of the deceased has also referred some unsupportive incidents of ill treatments, which took place after two years of the marriage, but we have noted a settlement and/or assurance given to Shevanta. There is nothing to show that Bharma had visited the deceased on 25th January, 1988, and with some Panchas, they visited the accused on 27th January, 1988. Except the evidence of these two brothers Bharma and Maruti, there were no independent witness examined to support their case, including the Panchas, as referred above. This witness has not specified anything about the demand of cash in the statement. However, he has added the figure for the

first time in the Court. The improvements made by this witness before the Court shows that this witness is also difficult to rely upon to convict the accused.

8. PW3, Sunderabai, the real sister of the deceased, who was residing in the same village as that of the deceased at the relevant time, did refer to the ill treatment and harassment meted out to the deceased by the accused. However, there are improvements that the deceased was harassed on account of dowry demand. Her conduct appears to be quite unnatural. When the deceased had informed her about the alleged threat given by the accused, she still kept silent and not informed anybody about the same. She had not informed her brothers or other relatives about the threat given by the accused. From her evidence, it is clear that she was not knowing about the relationship and/or the cruelty meted out to the deceased. Being the real sister of the deceased, at least immediately after the incident, she ought to have informed about the threat and/or ill treatment, as narrated to her by the deceased to PW1 and PW2 or any other such close relatives. PW3, in her cross-examination, has also answered that PW1 & PW2, the bothers, never enquired from her anything even after seeing the dead body of the deceased. Therefore, it is difficult to believe her. PW1 and PW2 later on

took PW3 with them in the night. All these facts should have been reflected in the complaint which was filed after two days from the date of incident.

9. PW4, Dattu Patil, has deposed that there was no quarrel on 30th January, 1988. Merely because accused No.2, who was acquitted by the learnd Judge, was not on talking terms with the deceased, that itself cannot be the foundation for harassment or ill treatment.

10. As observed by the learned Sessions Judge, there are inconsistencies in the various statements made by PW1, 2 and 3. If all these brothers and sisters knew about the ill treatment and harassment to the deceased, there was no reason for them to file the complaint after two days of the incident, that too, at about 6.00 p.m. in the evening of 4/2/1988. This delay remained unexplained which, in this case, in the circumstances aforesaid, is fatal to the prosecution. As already noted above, PW5 and PW6, who are the neighbours, stated that the relations between the deceased and the accused was cordial. Therefore, these independent witness Nos.5 and 6 disprove the case of ill treatment or harassment to the deceased at the hands of the accused, as sought to be contended by the prosecution, as well as, PW1, 2

and 3.

11. The counsel appearing for the respondents further relied upon **AIR 2001, S.C., 2828** [Satvir Singh & Ors. Vs. State of Punjab & Anr.] where the Apex Court has considered the provisions of Section 304B, 498A, 306, 411 r/w Section 116 of the IPC and held as under:

> 22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened "soon before her death". The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the Court would be in a position to guage that in all probabilities the cruelty would not have been the immediate cause of her death. It is hence for the Court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death"."

12. As noted, the learned Judge has also acquitted the accused on the foundation that there was no valid

marriage as it was a second marriage. Therefore, unless and until it is proved that the deceased was the legally wedded wife of accused No.1, the provisions of Section 498-A and 304-B of the IPC would be difficult to invoke. PW4 has deposed, specifically that the accused was married earlier. Therefore, the marriage of the deceased with the accused took place when the first wife of the accused was alive and/or was not divorced. No submissions were made on this ground by the learned counsel appearing for the respondents. However, the appellant also could not point out anything contrary to this reason given by the learned Sessions Judge while acquitting the accused. Therefore, this basic aspect also cannot be overlooked while maintaining the order of acquittal as the burden lies upon the prosecution to show that the deceased was the legally wedded wife of the accused and that she had committed suicide because of ill treatment and harassment meted out to her by the accused.

13. As observed by the learned Sessions Judge, the story of cruelty does not inspire any confidence and it appears to be a concocted one. It is essential to prove that resulted death was because of continuous cruelty and harassment. It is also necessary that it should have been "soon before her death". In the facts and

circumstances of the present case, for want of supportive evidence, it is difficult to accept the prosecution case that the deceased committed the suicide because of alleged harassment or cruelty. We have already noted that PW4, 5 and 6 have categorically stated that the relation of the deceased with the accused was cordial. The evidence of these witnesses, being neighbours, is independent evidence. The evidence of these witnesses appears to be more reliable and correct. We cannot overlook the fact that at the time of the incident, the deceased was six months' pregnant. The possibility of accident cannot be ruled out. The prosecution, according to us, was unable to prove the case of suicide. We have gone through the judgment, as well as, the reasoning and after taking into consideration the submissions made by the respective counsel, we are of the view that the prosecution has failed to prove the guilt of the accused. The order of acquittal is correct.

14. For the reasons recorded above, there is no merit in the Appeal. Therefore, the impugned judgment and order passed by the learned Addl. Sessions Judge, Kolhapur in Criminal Appeal No.51 of 1990 dated 2nd December, 1994, is maintained. The State Appeal is, therefore, dismissed.

[S.S. PARKAR, J.]

[ANOOP V. MOHTA, J.]

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